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BRICKFIELD BURCHETTE  
RITTS & STONE, PC

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WASHINGTON, D.C.  
AUSTIN, TEXAS

April 27, 2006

**Via Federal Express**

Mr. Charles Terreni  
Chief Clerk  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Suite 100  
Columbia, SC 29210

Re: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. –  
Annual Review of Base Rates for Fuel Costs.  
Docket No. 2006-1-E

Dear Mr. Terreni:

I have enclosed an original and eleven copies of *Nucor Steel's Reply to PEC's Response In Opposition to Nucor Steel's Motion to Compel* for filing in the above referenced matter. Please date stamp and return the extra copy for our files in the enclosed envelope.

Sincerely,



Garrett A. Stone

Enclosure

cc: All Parties

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

**DOCKET NO. 2006-1-E**

IN THE MATTER OF:	)	
Carolina Power & Light Company d/b/a	)	<b>Nucor Steel's Reply to PEC's</b>
Progress Energy Carolinas, Inc.	)	<b>Response In Opposition to</b>
Annual Review of Base Rates for	)	<b>Nucor Steel's Motion to</b>
Fuel Costs	)	<b>Compel</b>

SC PUBLIC SERVICE COMMISSION  
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On April 19, 2006 Nucor filed a Motion to Compel PEC to Respond to Nucor Discovery Request No. NUC-1-30. PEC filed its Response in Opposition on April 24, 2006. Nucor submits the following Reply to PEC's Response:

1. At the outset, we wish to place this matter in perspective. Normally, Nucor would not feel the need to file a reply to a response on a discovery motion. However, given PEC's disparaging remarks, the importance of the issue given high fuel costs, and PEC's specific threat regarding the pricing of service to Nucor, we feel that a Reply is necessary. In short, PEC's arguments in its Response, even if valid, go to the merits of the case (which will be decided later), instead of whether the information we have requested is discoverable. The Commission should permit us to fully investigate the issue and keep its options open for a later decision on the merits.

2. In the past two fuel cases, Nucor has generally attempted to avoid involving the Commission in discovery disputes with PEC, even though PEC objected to other Nucor requests (or failed to completely answer them), and even though we disagreed with their objections. Nucor took the unusual step of filing a motion to compel on this specific request (NUC 1-30) due to the potential

significance of the issue in this case and the need for the information in order that the Commission would have before it the information necessary to determine an adjustment should the Commission ultimately agree with Nucor's position.

3. PEC admits that it "derives" the price for its RTP customers by use of marginal fuel costs. (PEC Response at 2) PEC also admits that it "treats" its RTP customers as if they paid the average fuel cost under PEC's Fuel Cost Rider 39V. (*Id.*) In our view, this simply means that PEC is recovering the difference between marginal fuel costs and average fuel costs twice; once from the RTP customer and once from the other customers. As a result, the Commission should have the opportunity to decide if it wants to continue to permit this double-recovery and, if not, determine the appropriate adjustment. The information sought on discovery would help address these issues. PEC does not dispute this in its Response, they only dispute Nucor's underlying theory.

4. PEC calls Nucor's view "bogus" and "disingenuous." (*Id.* at 1, 2) While PEC has used its Response to attack the merits of Nucor's position, that is not really the issue to be decided now. The issue for now is whether the information should be discoverable as potentially leading to relevant evidence. Later in the process, after a full hearing and review of all the evidence, the Commission can resolve the merits of the issue.

5. While PEC's arguments generally go to the merits of the case, rather than discoverability, for purposes of completeness we will briefly touch on them here:

- First, PEC repeatedly argues that Rider 39V ultimately governs its fuel cost recovery. (*Id.* at 2, 3) However, PEC ignores the fact that the terms of Rider 39V are subject to the Commission's jurisdiction in this proceeding (for example, Rider 39 was changed as a result of the last fuel case). Therefore, if the Commission agrees with Nucor's approach, it can make appropriate modifications to Rider 39 in this proceeding.
- Second, PEC argues that marginal fuel costs may be less in some hours than average fuel cost. (*Id.* at 3) While that is true, without the data, we do not know the effects in this fuel case. Moreover, it is highly unlikely that PEC would be so vigorously fighting this issue, if marginal fuel costs were less than average fuel costs (on an average basis) for these sales. The issue here is whether the Commission and parties should have the necessary data to make a decision.
- Third, PEC argues that it should be permitted to keep marginal fuel costs above the fuel factor (average fuel costs) to pay for other costs. (*Id.*) The problem with this approach is that PEC has other provisions to recover these other costs in the RTP tariff already. For example, the tariff already provides for separate recovery of O&M costs, taxes, losses, a capacity cost and a margin adder. Why should PEC get to keep the difference between average fuel cost and marginal fuel cost under these circumstances?
- Fourth, PEC argues that Nucor's approach would result in RTP sales being excluded from the cost of service in future rate cases. (*Id.*) This argument is without merit. The treatment of RTP sales for fuel purposes does not control how RTP sales are treated in future rate cases. In a future rate case, the Commission has the full authority to prescribe whatever treatment it wishes. In the interim, however, there is no reason we cannot address how the marginal fuel costs paid by RTP customers should be treated for purposes of the fuel factor. Whatever treatment of these fuel costs is adopted, it will have no impact on RTP customer rates; it would only ensure that the other customers, not PEC, got the benefit of the payment of marginal fuel costs by RTP customers.
- Fifth, PEC argues (without citation) that "Nucor's witness in Docket No. 2005-1-E suggested that RTP revenues be treated the same as those derived from off-system wholesale sales." (*Id.* at 4) We cannot find any such suggestion in Dr. Zarnikau's testimony and that is not our position. It is Nucor's view that RTP sales are not "off-system wholesale sales." They are on-system, native load, retail sales. Our only contention is that in designing its RTP rates PEC elected to recover marginal fuel costs from RTP customers; as

a result, when determining the fuel factor in SC, these rates should not be treated as if these customers have only paid the average fuel costs through the fuel factor.

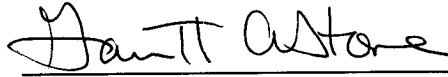
6. Finally, PEC threatens that if Nucor's proposed treatment were to be adopted, that the Commission "must then allow PEC to charge Nucor a fuel factor that reflects the replacement cost of fuel to serve them ...." Nucor obviously strongly disagrees with PEC's contention. In the first instance, the rate schedule applicable to Nucor is not at issue here. The rate applicable to Nucor (and other customers) explicitly includes the SC fuel factor (based on average fuel costs); it is not an RTP rate; and Nucor's load is retail, native load. Nucor is not interested in and did not sign up for an RTP rate. The fact that Nucor has curtailable service under certain circumstances does not justify any change in the rate applicable to Nucor, simply to punish Nucor for the temerity of raising this issue; nor can such a change legally be made in this proceeding.

7. In sum, as shown above, PEC's Response attacks the merits of Nucor's position, but that is not the issue raised by Nucor's motion to compel. Nucor's motion goes solely to whether the information we have requested should be discoverable as potentially leading to evidence that can be submitted in this proceeding. The merits of Nucor's and PEC's arguments on treatment of RTP fuel costs can be properly addressed by the Commission after the hearing in this case.

WHEREFORE, for the reasons set forth above and in its original Motion to Compel, Nucor urges the Commission to compel PEC to provide the requested information as soon as possible (given the Intervenor testimony deadline of May 17, 2006).

Respectfully submitted,

BRICKFIELD, BURCHETTE, RITTS &  
STONE, P.C.



Garrett A. Stone

1025 Thomas Jefferson Street, NW  
Eighth Floor, West Tower  
Washington, DC 20007  
(202) 342-0800  
(202) 342-0807 (Fax)  
[gas@bbrslaw.com](mailto:gas@bbrslaw.com)

MOORE & VAN ALLEN, PLLC

Thomas S. Mullikin  
Robert R. Smith II

100 North Tryon Street  
Suite 4700  
Charlotte, North Carolina 28202  
(704) 331-1000  
(704) 339-5870 (fax)  
[tommullikin@mvalaw.com](mailto:tommullikin@mvalaw.com)  
[robsmith@mvalaw.com](mailto:robsmith@mvalaw.com)

Counsel for Nucor Steel – South  
Carolina

Date: April 27, 2006

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**DOCKET NO. 2006-1-E**

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SC PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

**Carolina Power & Light Company d/b/a  
Progress Energy Carolinas, Inc.  
Annual Review of Base Rates  
For Fuel Costs**

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**Certificate of Service**

This is to certify that a copy of the foregoing document, **NUCOR STEEL'S REPLY TO  
PEC'S RESPONSE IN OPPOSITION TO NUCOR STEEL'S MOTION TO COMPEL**,  
was served upon the following parties at the addresses set forth by first-class mail, electronic  
mail, telefax, or Federal Express on this the 27<sup>th</sup> day of April, 2006:

Len S. Anthony, Esq.  
*Progress Energy Services Company*  
P.O. Box 1551 / PEB 17A4  
Raleigh, NC 27602

Florence P. Belser, Esq.  
Wendy B. Cartledge, Esq.  
Nanette S. Edwards, Esq.  
*Office of Regulatory Staff*  
Post Office Box 11263  
Columbia, SC 29211

Scott Elliott, Esq.  
*South Carolina Energy Users Committee*  
Elliott & Elliott, PA  
721 Olive Street  
Columbia, SC 29205

  
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Garrett A. Stone